

CHAPTER NO. 482

SENATE BILL NO. 1061

By Ketron, McLeary, Bryson, Crutchfield, Henry, Miller, Curtis S. Person, Jr., Tracy, Norris, Burchett, Black, Cohen, Burks, Jackson, Fowler

Substituted for: House Bill No. 498

By DuBois, Eldridge, Gresham, Sargent, Hill, Fraley, Tidwell, Shepard, Langster, Coleman, McMillan, Hensley, Marrero, Sontany, Hargrove, Pinion, Hackworth, Litz, Harwell, Montgomery, Hood, Phillip Johnson, Ferguson, Campfield, Fitzhugh, Harry Brooks, West, John DeBerry, Shaw, Moore, Strader, Bone, Miller, Towns, Odom, Winningham, Sherry Jones, Pruitt, Favors, Brown, Hargett

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 3 and Title 40, relative to stalking.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-315, is amended by deleting the section in its entirety and substituting instead the following:

(a) As used in this section:

(1) "Course of conduct" means a pattern of conduct composed of a series of two (2) or more separate noncontinuous acts evidencing a continuity of purpose.

(2) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(3) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unwanted contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

(4) "Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(5) "Unconsented contact" means any contact with another person that is initiated or continued without that person's consent or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(A) Following or appearing within the sight of that person;

(B) Approaching or confronting that person in a public place or on private property;

(C) Appearing at that person's workplace or residence;

(D) Entering onto or remaining on property owned, leased, or occupied by that person;

(E) Contacting that person by telephone.

(F) Sending mail or electronic communications to that person;

(G) Placing an object on, or delivering an object to, property owned, leased, or occupied by that person.

(6) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(b)(1) A person commits an offense who intentionally engages in stalking.

(2) Stalking is a Class A misdemeanor.

(c)(1) A person commits aggravated stalking who commits the offense of stalking as prohibited by subsection (b) and:

(A) In the course and furtherance thereof, displays a deadly weapon; or

(B) The victim of the offense was less than eighteen (18) years of age at any time during the person's course of conduct and the person is five (5) or more years older than the victim; or

(C) The person has previously been convicted of stalking within seven (7) years of the instant offense; or

(D) Makes a credible threat to the victim, the victim's child, sibling, spouse, parent, or dependents with the intent to place any such person in reasonable fear of death or bodily injury; or

(E) At the time of the offense, such person was prohibited from making contact with the victim under a restraining order or injunction for protection, an order of protection, or any other court-imposed prohibition of conduct toward the victim or the victim's property and the person knowingly violates such injunction, order or court-imposed prohibition.

(2) Aggravated stalking is a Class E felony.

(d)(1) A person commits especially aggravated stalking who:

(A) Commits the offense of stalking or aggravated stalking and has previously been convicted of stalking or aggravated stalking involving the same victim of the instant offense; or

(B) Commits the offense of aggravated stalking and intentionally or recklessly causes serious bodily injury to the victim of such offense or to the victim's child, sibling, spouse, parent or other dependent.

(2) Especially aggravated stalking is a Class C felony.

(e) Notwithstanding any other provision of law, if the court grants probation to a person convicted of stalking, aggravated stalking or especially aggravated stalking, it may keep such person on probation for a period not to exceed the maximum punishment for the appropriate classification of offense. Regardless of whether a term of probation is ordered, the court may, in addition to any other punishment otherwise authorized by law, order the defendant to do the following:

(1) Refrain from stalking any individual during the term of probation;

(2) Refrain from having any contact with the victim of the offense or the victim's child, sibling, spouse, parent or dependent;

(3) Be evaluated to determine the need for psychiatric, psychological, or social counseling and if, determined appropriate by the court, to receive psychiatric, psychological or social counseling at the defendant's own expense;

(4) If as the result of such treatment or otherwise, the defendant is required to take medication, the court may order that the defendant submit to drug testing or some other method by which the court can monitor whether the defendant is taking the required medication; and

(5) Submit to the use of an electronic tracking device with the cost of such device and monitoring the defendant's whereabouts to be paid by the defendant.

(f) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the

victim to discontinue such conduct or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, is prima facie evidence that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(g)(1) If a person is convicted of aggravated or especially aggravated stalking, or another felony offense arising out of a charge based on this section, the court may order an independent professional mental health assessment of such defendant's need for mental health treatment. The court may waive the assessment if an adequate assessment was conducted prior to the conviction.

(2) If the assessment indicates that the defendant is in need of and amenable to mental health treatment, the court may include in the sentence a requirement that the offender undergo treatment and that the drug intake of such defendant be monitored in the manner best suited to the particular situation. Such monitoring may include periodic determinations as to whether the defendant is ingesting any illegal controlled substances as well as determinations as to whether the defendant is complying with any required or recommended course of treatment that includes the taking of medications.

(3) The court shall order the offender to pay the costs of assessment under this subdivision unless the offender is indigent under § 40-14-202.

(h) Any person who reasonably believes they are a victim of an offense under this section, regardless of whether the alleged perpetrator has been arrested, charged or convicted of a stalking-related offense, shall be entitled to seek and obtain an order of protection in the same manner and under the same circumstances as is provided for victims of domestic abuse by the provisions of Tennessee Code Annotated, Title 36, Chapter 3, Part 6.

(i) When a person is charged and arrested for the offense of stalking, aggravated stalking or especially aggravated stalking, the arresting law enforcement officer shall inform the victim of such offense that the person arrested may be eligible to post bail for the offense and be released until the date of trial for the offense.

(j) If a law enforcement officer or district attorney general believes that the life of a possible victim of stalking is in immediate danger unless and until sufficient evidence can be processed linking a particular person to the offense, the district attorney general may petition the judge of a court of record having criminal jurisdiction in that district to enter an order expediting the processing of any evidence in a particular stalking case. If after hearing the petition, the court is of the opinion that the life of the victim may be in immediate danger if the alleged perpetrator is not apprehended, it may enter such an order directed to the Tennessee bureau of investigation or any other agency or laboratory which may be in the process of analyzing evidence for that particular investigation.

(k) (1) For purposes of determining if a course of conduct amounting to stalking is a single offense or multiple offenses, the occurrence of any of the following events breaks the continuous course of conduct, with respect to the same victim, that constitutes the offense:

(A) The defendant is arrested and charged with stalking, aggravated stalking or especially aggravated stalking;

(B) The defendant is found by a court of competent jurisdiction to have violated an order of protection issued to prohibit the defendant from engaging in the conduct of stalking; or

(C) The defendant is convicted of the offense of stalking, aggravated stalking or especially aggravated stalking.

(2) If a continuing course of conduct amounting to stalking engaged in by a defendant against the same victim is broken by any of the events set out in subdivision (1), any such conduct that occurs after that event commences a new and separate offense.

SECTION 2. Tennessee Code Annotated, Section 40-7-103, is amended by adding to subsection (a) the following new subdivision (9):

(9) When such officer has probable cause to believe a person has committed the offense of stalking as prohibited by § 39-17-315.

SECTION 3. Tennessee Code Annotated, Section 40-6-205, is amended by deleting subsection (b)(1) and substituting instead the following:

(1) The offense complained of is a felony, as defined in § 39-11-110, or the offense of stalking, as defined in § 39-17-315;

SECTION 4. Tennessee Code Annotated, Section 40-6-215, is amended by deleting subsection (a)(2)(A) and substituting instead the following:

(A) The offense complained of is a felony, as defined in § 39-11-110, or the offense of stalking, as defined in § 39-17-315;

SECTION 5. Tennessee Code Annotated, Section 40-11-150, is amended by deleting from the first sentence of subsection (a) the language:

for the release of a defendant who is arrested for any criminal offense defined in Title 39, Chapter 13,

and substituting instead the following:

for the release of a defendant who is arrested for the offense of stalking, aggravated stalking or especially aggravated stalking as defined in § 39-17-315, any criminal offense defined in Title 39, Chapter 13,

SECTION 6. Tennessee Code Annotated, Section 40-11-150, is amended by deleting from the first sentence of subsection (h)(1) the language:

Any offender arrested for any criminal offense defined in Title 39, Chapter 13,

and substituting instead the following:

Any offender arrested for the offense of stalking, aggravated stalking or especially aggravated stalking as defined in § 39-17-315, or any criminal offense defined in Title 39, Chapter 13,

SECTION 7. Tennessee Code Annotated, Section 40-35-303, is amended by deleting subsection (m) and substituting instead the following:

(m) In determining whether a person convicted of the offense of stalking, aggravated stalking or especially aggravated stalking as defined in § 39-17-315, or any criminal offense defined in Title 39, Chapter 13, in which the victim falls within the definition set forth within § 36-3-601(8), should be granted probation, the court shall consider the safety and protection of the victim of such offense and of any other member of the victim's family or household.

SECTION 8. Tennessee Code Annotated, Section 39-17-1316, is amended by deleting subsection (a)(1) and substituting instead the following:


(1) Any person appropriately licensed by the federal government may stock and sell firearms to persons desiring them; however, sales to persons who have been convicted of the offense of stalking as prohibited by § 39-17-315, are addicted to alcohol and sales to persons ineligible to receive them under 18 U.S.C. § 922 are prohibited.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect July 1, 2005, the public welfare requiring it.

PASSED: May 28, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 21st day of June 2005


PHIL BREDESEN, GOVERNOR